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BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE
ON APPEAL TO THE BOARD OF APPEALS

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In re Application of: Jerry A. Jenks)
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Serial No.: 09/833,978)
)
Filed: 04/12/2001)
)
Title: **Electrical Interrupt Switch**)
_____)

Date: March 13, 2003
Group Art Unit: 2833
Examiner: Luebke, R.S.

#13
3/24/03
JLW

CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231.

Terry Lakos
Name: TERRY LAKOS

3-13-03
Date

BRIEF ON APPEAL

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

Dear Sir:

This is an appeal from the Final Rejection, dated October 28, 2002 for the above identified application, and replaces the Appeal Brief filed on February 12, 2003 so as to correct deficiencies cited by the examiner in the Advisory Action mailed February 19, 2003.

REAL PARTY IN INTEREST

The party named in the caption of this brief is the real party of interest in this appeal.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to appellant, appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

STATUS OF CLAIMS

Claims 1-4 and 6-11 are the subject of this appeal taken from the examiner's final rejection of October 28, 2002. Claims 5 and 12 were previously canceled without prejudice and are not subject to examination on appeal.

STATUS OF AMENDMENTS

A supplemental amendment was filed January 31, 2003 to address objections to the specifications, claims, and drawings that resulted in a rejection of Claim 10 under 35 U.S.C. § 112. The supplemental amendment was entered by the examiner on February 7, 2003. A subsequent Advisory Action was mailed by the examiner on February 19, 2003. A second Advisory Action was mailed by the examiner on March 7, 2003 indicating deficiencies in the previously filed appeal brief.

SUMMARY OF INVENTION

As described in the specification page 5, line 8 through page 7, line 1, FIG. 1, an electrical interrupt switch 10 is shown, in accordance with a preferred embodiment of the present invention, and is provided to allow the disconnection of electrical plug-connected

equipment without removing the plug from the receptacle. It is anticipated that such a switch 10 could be made available for use on grounded or ungrounded electrical systems. The switch 10 has a housing 12 that has a compact overall outer dimension approximately one inch high, one inch wide and three inches long. Extending outward from one end of the housing 12 are male blade connectors 14 sized for a standard 120 VAC plug that connects to common 120 VAC outlets found in homes and business. Additionally, a ground prong 15 could be made available depending on the model. Opposite the blade connectors 14 are corresponding receptacle connectors 16a to allow for the connection of a conventional electrical power cord. Accessible through the upper portion of the housing 12 is a rocker switch 18 that allows the user to open or close the electrical circuit in the manner described below.

Referring now to FIG. 2 and FIG. 3, the housing pivotally supports the rocker switch 18 about a pivoting axle 40. Having a pair of flat, intersecting touching surfaces 42 about the upper portion of the rocker switch 18, the lower portion is a cam-shaped arcuate body 44. A first electrically conductive contact 46 is supported along one side of the body 44. A second electrically conductive contact 48a is affixed to and in electrical communication with one receptacle connector 16a, and a third electrically conductive contact 48b is affixed at the same end and in electrical communication with the other receptacle connector 16a. The second and third electrically conductive contacts 48a and 48b each comprise a non-linear configuration, wherein a portion of each contact 48a and 48b projects downward from a horizontal portion of the respective contact 48a or 48b and away from the cam-shaped arcuate body 44 such that as the rocker switch 18 is articulated, the

first electrical conductive contact 46 engages the blade connector 14 at one end and engages the second electrical conductive contact 48a, thereby creating electrical continuity between the receptacle connectors 16a, through the second contact 48a and third contact 48b, to the first contact 46 and to the blade connectors 14.

It is envisioned that parallel switching conductors of identical configuration are mounted about the body 44 such that each receptacle connector 16a is switched between electrical continuity to a respective blade connector 14.

Should an electrical interrupt switch 10 have a ground receptacle 16b, a ground prong 15 would be in continuous electrical communication therewith such that ground continuity is not effected by position or operation of the rocker switch 18.

ISSUES

In the office action dated October 28, 2002, the examiner rejected:

Claim 1 under 35 U.S.C. § 102(b) as being anticipated by Freeman, U. S. Patent No. 2,706,225;

Claims 2-4, 6, 7 and 9 under 35 U.S.C. § 103(a) as unpatentable over Freeman in view of Osika, U.S. Patent No. 4,463,228 and

Claims 7-11 under 35 U.S.C. § 103(a) as unpatentable over Freeman in view of Osika and in further view of Lockard, U.S. Patent No. 3,974,347.

Therefore, the issues on appeal are:

1. Is claim 1 anticipated under 35 U.S.C. § 102(b) by Freeman?
2. Are claims 2-4, 6, 7 and 9 unpatentable under 35 U.S.C. § 103(a) by Freeman in view of Osika ?

and

3. Are claims 7-11 unpatentable under 35 U.S.C. § 103(a) by Freeman in view of Osika and in view of Lockard?

GROUPING OF CLAIMS

Claims 1 forms a first group of claims; Claims 2-4, 6, 7 and 9 form a second group of claims; and Claims 7-11 form a third group of claims. Each group of claims can stand or fall independently of one another.

ARGUMENT

1. Rejections under 35 U.S.C. § 112

The disclosure was objected to due to typographic and grammatical errors in the specification, claims, and drawings.

It is felt that the changes made per the Supplemental Amendment address these objections. The examiner's entry of the Supplemental Amendment filed on February 7, 2003 appears to render further argument on this issue moot.

2. Rejections under 35 U.S.C. § 102

The Examiner rejected Claim 1 under 35 U.S.C. § 102(b) as being anticipated by Freeman, U. S. Patent No. 2,706,225. In a previous Office Action, the Examiner rejected Claim 1 under 35 U.S.C. § 102(b) as being anticipated by Osika. The Examiner's rejection of Claim 1 under 35 U.S.C. § 102(b) as being anticipated by Freeman in the Final Office Action dated October 28, 2002, is the first time this rejection appeared on record.

In undertaking to determine whether one reference anticipates another under 35 U.S.C. § 102(b), a primary tenet is that the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Several differences exist between the invention claimed in Freeman and the currently claimed invention.

The present invention comprises a 120 VAC plug system incorporated into a housing and insertable into an electrical outlet, an electrical receptacle opposite to the 120 VAC plug system and a rocker switch for engaging and disengaging . In contrast, Freeman has a pair of male plugs, but lacks the 120 VAC ground plug mechanism. Thus, Freeman fails to disclose every element claimed by the present invention. Therefore, and

in light of the noted differences between the present invention and Freeman, the examiner's rejection of Claim 1 under 35 U.S.C. § 102(b) is inappropriate, and Claim 1 is presently considered allowable.

3. Rejections under 35 U.S.C. § 103

The examiner respectfully rejected 2-4, 6, 7 and 9 as unpatentable under 35 U.S.C. § 103(a) by Freeman in view of Osika and claims 7-11 as unpatentable under 35 U.S.C. § 103(a) by Freeman in view of Osika and in further view of Lockard. However, several differences exist between the present invention and those in Freeman, Osika, and Lockard.

As to the rejection of Claims 2-4, 6, 7 and 9 as unpatentable under 35 U.S.C. § 103(a) by Freeman in view of Osika, the present invention claims male blade connectors integral to a housing and opposite female receptacles, a ground prong extending from a first end of the housing, and inclusion of a housing mounted switch (as opposed to remotely actuated toggle arms). Freeman fails to disclose ground prongs integral to and extending from the body. Osika fails to disclose a ground prong integral to and extending from a first end of the body that is capable of insertion into an electrical outlet. Thus, neither Freeman nor Osika, either independently or in combination, disclose every element of independent base Claim 2, nor the additional limitations provided in dependent Claims 3, 4, 6, 7 and 9 thus the Examiner's rejection of Claim 2 under 35 U.S.C. § 103(a) is inappropriate, therefore Claims 2-4, 6, 7 and 9 are presently considered allowable.

As to the rejection of Claims 7-11 as unpatentable under 35 U.S.C. § 103(a) by

Freeman in view of Osika and in further view of Lockard, there several differences between the present invention and the prior art cited in addition to those differences previously mentioned.

As to Claim 7, the present invention claims a rocker switch supported about a pivoting axle, providing angular movement to the rocker switch to facilitate opening and closing of the electrical circuit between the conductive contacts.

As to Claim 8, the present invention claims a rocker switch having a pair of flat, intersecting surfaces free of notches and flares. Lockard has a knob (30) with an uneven surface, and wherein the surface has notches and flares.

As to Claim 9, the present invention claims a rocker switch with a cam-shaped arcuate body. The Examiner referenced an arcuate portion (22a) of a contact (8) in Lockard as rendering obvious the limitations of Claim 9. However, the arcuate portion of the contact is not similar to the claimed invention, as the contact bridges the electrical communication between 46a and 48a, as opposed to the male prongs and male receptacles, respectively, of the present invention. Further, the knob (30) does not have an arcuately shaped lower portion as presently claimed, but instead has an inverted lower portion with projecting arms.

As to Claim 10, the present invention claims first, second and third electrical conductive contacts, wherein when the first electrical conductive contact engages the blade connector (14), the second and third electrical conductive contacts are also engaged and complete an electrical circuit within the housing. In Lockard, the opposite is true. The contacts (46a and 48a) are actually separated, and a bottom portion (25) and a

beam (26) bridge the separation of the contacts. Thus, this reference actually teaches away from the present invention as claimed in Claim 10.

As to Claim 11, the present invention claims a set of parallel switching conductors capable of supplying electrical current to corresponding blade connectors. However, Lockard does not provide switchable electrical continuity between receptacles and blade connectors. As can best be discerned from Lockard, there are no receptacles for insertion of an electrical plug.

Thus, based on the differences provided, the Examiner's rejection of Claims 7-11 under 35 U.S.C. § 103(a) is inappropriate, and Claims 7-11 are presently considered allowable.

It is felt that the differences between the present invention and all of these references are such that rejection based upon 35 U.S.C. § 103, in addition to any other art, relevant or not, is also inappropriate. However, by way of additional argument application wishes to point out that it is well established at law that for a proper *prima facie* rejection of a claimed invention based upon obviousness under 35 U.S.C. § 103, the cited references must teach every element of the claimed invention. Further, the initial burden of presenting a *prima facie* case of obviousness rests on the examiner. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed.Cir. 1992). A proper analysis under 35 U.S.C. 103 requires, inter alia, consideration of two factors:

1. Whether the prior art would have suggested to those of ordinary skill in the art that they should have made the claimed composition or device, or carried out the claimed process; and

2. Whether the prior art would have revealed a reasonable expectation of success in doing so.

See In re Dow Chem. Co., 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed.Cir. 1988).

Both the suggestion and the reasonable expectation of success must be found in the prior art, not in the applicant's disclosure. Id.

Also, when determining the scope of teaching of a prior art reference, the Federal Circuit has declared:

"[t]he mere fact that the prior art could be so modified should not have made the modification obvious unless the prior art suggested the desirability of the modification." (Emphasis added). In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

There is no suggestion as to the desirability of any modification of the references to describe the present invention. An analysis of the disclosures within the cited references fails to cite every element of the claimed invention. In cases such as this, i.e., when the prior art references require a selective combination to render obvious a subsequent claimed invention, there must be some reason for the selected combination other than the hindsight obtained from the claimed invention itself. Interconnect Planning Corp v. Feil, 774 F.2d 1132, 227 USPQ 543 (CAFC 1985).

The examiner seems to suggest that it would be obvious for one of ordinary skill to attempt to produce the currently disclosed invention. However, there must be a reason or suggestion in the art for selecting the design, other than the knowledge learned from the present disclosure. In re Dow Chemical Co., 837 F.2d 469, 5 USPQ.2d 1529 (CAFC 1988); see also In re O'Farrell, 853 F.2d 894, 7 USPQ 2d 1673 (CAFC 1988).

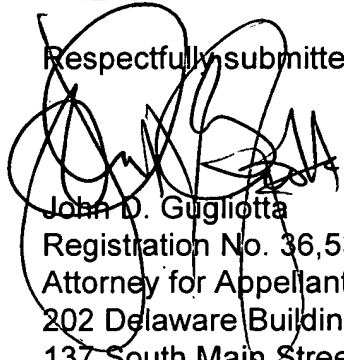
To summarize, it appears that only in hindsight does it appear obvious to one of ordinary skill in the pertinent art to combine the present claimed and disclosed combination of elements. To reject the present application as a combination of old elements leads to an improper analysis of the claimed invention by its parts, and instead of by its whole as required by statute. Custom Accessories Inc. v. Jeffery-Allan Industries, Inc., 807 F.2d 955, 1 USPQ 2d 1197 (CAFC 1986); In re Wright, 848 F.2d 1216, 6 USPQ 2d 1959 (CAFC 1988).

Applicant feels that, at best, the examiner has cited a number of references variously containing some of the limitations in applicants claim; however, these references and the limitations for which they were cited are combined piecemeal, without any suggestion or motivation for their combination and without regard to the purpose of the applicant's invention. This is similar to the scenario in *In re Blammer*, Civ. App. No. 93-1108, slip op. At 3-4 (Fed. Cir. Sept. 21, 1993)(unpublished), wherein the examiner in that case rejected an application as obvious in light of twelve references. The Board of Appeals in that matter concluded that the invention would have been obvious in light of only four of the references, which was also overturn by the Federal Circuit.

It is felt that the differences between the present invention and all of these references are such that rejection based upon 35 U.S.C. § 103, in addition to any other art, relevant or not, is also inappropriate. Accordingly, the reversal of the Examiner by the honorable Board of Appeals is respectfully solicited.

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Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'John D. Gugliotta', is written over the typed name and the first two lines of the address.

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APPENDIX

THE CLAIMS ON APPEAL

The claims on appeal are as follows:

1. (Amended) An electrical interrupt switch for allowing disconnection of electrical plug-connected equipment without removing an electrical plug from a receptacle, said switch comprising:

 a 120 VAC plug at a first end;

 a corresponding receptacle at a second end for allowing connection of an electrical power cord, said receptacle in rigid mechanical contact with said plug; and

 a rocker switch that allows a user to interrupt flow of electrical current.

2. (Amended) An electrical interrupt switch comprising:

 a housing having a first end opposite a second end and a top surface;

 a pair of male blade connectors extending outward from said first end;

 a ground prong extending outward from said first end;

 female receptacle connectors penetrating said second end opposite said male blade connectors;

 a ground receptacle in electrical communication with said ground prong; and

 switch means accessible through said top surface for allowing a user to open or close an electrical circuit between said male blade connectors and said female receptacle connectors, respectively.

3. (Amended) The electrical interrupt switch of Claim 2, wherein said male blade connectors are sized for a 120 VAC plug which connects to 120 VAC outlets.

4. (Amended) The electrical interrupt switch of Claim 2, wherein said female receptacle connectors allow for the connection of an electrical power cord.

5. Canceled.

6. (Amended) The electrical interrupt switch of Claim 2, wherein said housing has a compact overall outer dimension one inch high, one inch wide and three inches long.

7. (Amended) The electrical interrupt switch of Claim 2, wherein said switch means comprises a rocker switch, and wherein said housing pivotally supports said rocker switch about a pivoting axle, thereby providing said rocker switch with angular movement for opening or closing said electrical circuit between conductive contacts.

8. (Amended) The electrical interrupt switch of Claim 7, wherein said rocker switch further comprises a pair of flat and intersecting surfaces about an upper portion of said rocker switch.

9. The electrical interrupt switch of Claim 7, wherein a lower portion of said rocker switch comprises a cam-shaped arcuate body.

11. (Twice Amended) The electrical interrupt switch of Claim 10, wherein parallel switching conductors of identical configuration are mounted about said body such that each said receptacle connector is switchable to electrical continuity of a respective blade connector.

12. Canceled.



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